

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION**

**JAMES D. JOHNSON, as next friend to
Olivia Y., et al.**

PLAINTIFFS

vs.

CIVIL ACTION NO.: 3:04cv251LN

**HALEY BARBOUR, as Governor of the
State of Mississippi, et al.**

DEFENDANTS

DEFENDANTS' MOTION TO PLACE EXHIBITS UNDER SEAL

Defendants respectfully move this Court, pursuant to Local Uniform Civil Rule 79(e), to place under seal Exhibits "X", "Y" and "Z" to their Response in Opposition to Plaintiffs' Motion for Contempt and for Appointment of a Receiver, filed contemporaneously with this Motion.

The exhibits reveal confidential individually-identifying information about children in Defendants' custody, their families, and other persons included in case files covered by this Court's Confidentiality Order dated August 5, 2004 (Document No. 46). This Confidentiality Order provides, in pertinent part in Paragraph 2:

Any individually-identifying information in any record maintained and produced by the Department of Human Services ("DHS") regarding any plaintiff child, such child's family members, foster family members, and persons included in any case files as the source of information concerning the child – including but not limited to these person's names, addresses, telephone numbers, social security numbers, dates of birth and other individual information likely to enable a reasonable member of the general public to ascertain their identities – is hereby designated to be confidential and shall be subject to the provisions of this Order.

Defendants' Response was filed this date without the above-identified exhibits, which will be filed under seal in the event the Court grants this Motion.

The above-listed exhibits are reports and spreadsheets that are/were produced for the use of DHS in caring for the children in its custody and reveal individually-identifying information

concerning the children in its care. Such confidential information is protected by the Court's August 4, 2004 Confidentiality Order.

Accordingly, Defendants request that this Court place under seal Exhibits "X", "Y" and "Z" to their Response in Opposition to Plaintiffs' Motion for Contempt and for Appointment of a Receiver.

Respectfully submitted, this the 3rd day of December, 2010.

/s/ Dewitt L. ("Rusty") Fortenberry, Jr.

Dewitt L. ("Rusty") Fortenberry, Jr. (MSB #5435)
Kenya Key Rachal (MSB # 99227)
Ashley Tullos Young (MSB # 101839)
BAKER, DONELSON, BEARMAN, CALDWELL
& BERKOWITZ, PC
4268 I-55 North
Meadowbrook Office Park
P.O. Box 14167
Jackson, Mississippi 39211
Telephone: (601) 351-2400
Facsimile: (601) 351-2424

Harold Pizzetta, III, Esq.
Assistant Attorney General
General Civil Division
Carroll Gartin Justice Building
430 High Street
Jackson, MS 39201
Telephone: (601) 359-3816
Facsimile: (601) 359-2003

COUNSEL FOR THE DEFENDANTS

CERTIFICATE OF SERVICE

I, Dewitt L. "Rusty" Fortenberry, Jr., do hereby certify that on December 3, 2010, I electronically filed a true and correct copy of the foregoing document with the Clerk of court using the ECF system which sent notification of such to counsel as follows:

Shirim Nothenberg (MBN 43990 *pro hac vice*)
Marcia Robinson Lowry (MBN 43991 *pro hac vice*)
Jessica Polansky (MBN 45356 *pro hac vice*)
CHILDREN'S RIGHTS
330 Seventh Avenue, 4th Floor
New York, NY 10001

W. Wayne Drinkwater, Jr. (MBN 6193)
BRADLEY ARANT ROSE & WHITE LLP
188 East Capitol Street, Suite 450
Jackson, MS 39201

John Lang (MBN 43987 *pro hac vice*)
John Piskora (MBN 44474 *pro hac vice*)
LOEB & LOEB, LLP
345 Park Avenue
New York, New York 10154

SO CERTIFIED, this the 3rd day of December, 2010.

/S/ DEWITT L. ("RUSTY") FORTENBERRY, JR.